

Montana State Senate



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The Big Sky Country

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EXHIBIT 11

Jim Taylor
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Re: Office of the State Public Defenders

Dear Mr. Chairman:

Chief Public Defender Randi Hood and the Public Defender Commission faced a very difficult task in getting a public defender organization up and running. I think that things are going well and I wanted to thank the Commission and Ms. Hood for their efforts.

I for one, and I believe there are other legislators of like mind, believe that reasonable increases in personnel, and greater expenditure of money than planned, were to be expected. The data that the legislature and the Commission was provided was inaccurate. The best plans based on flawed data are likely to be revised. Further, even if the data had been good, the Office of State Public Defenders was a new endeavor, a new institution, and it is not reasonable to expect precision forecasting of requirements.

While a vote was not taken, there was no resistance to increasing the FTEs by a little over 100 people. The argument for the increase was made by Ms. Hood, and accepted. I commend the Commission and Ms. Hood for standing up to resistance to a public defender office in Kalispell. It took strength and courage. However, a full time office that will handle all of the cases, except conflict cases, is desirable. In my opinion, contacting one half of the cases with the same people that did not measure up to Ms. Hood's standards, or the American Civil Liberties Union's expectations, in the past is not a good idea.

I have not been involved with the effort to get the public defender system on track since the 2003-2005 interim. I must confess that I do not know that much about the "nuts and bolts" of the system, and my comments may be wide of the mark. However, I do have some concerns.

It seems that some people hired for management positions do not have management experience. As a group, lawyers are poor managers, and those without experience may well have

problems in performing as required. The skills to try a case are different from the skills that make a good manager. This is not criticism of putting new management in Missoula, after some investigation that move was clearly necessary, and I am embarrassed that I did not understand the situation better. Steve Nardi told me that there was a nationwide effort to advertize the management jobs, but it did not produce the expected applicants. I also suggested that retiring senior partners in large law firms, or retiring civil servants, might be interested. Mr. Nardi indicated that those sources were considered, but, once again, did not produce any candidates. In any event, time will tell if management has the experience for the job.

Something else about which I am concerned is contracting for conflict cases in the situation where there is a public defender office staffed by state employees, known as "full time equivalents" (FTEs). Many legislators will not be sympathetic to paying FTEs and spending a lot more money on contractors; I am one of them. I had envisioned, as an example, Hamilton handling conflicts from Missoula, and visa versa. The Commission has decided that if an office was within the same Region it could not handle a "conflict" case from another office in the Region. To me this is putting too fine a point on "ethics" and "conflicts". Still, I am not second guessing the Commission, at least until I see the cost.

While the Commission is large as presently constituted, I believe that adding two legislators would assist the Commission in accomplishing its mission. One representative from the Appropriations Committee's Subcommittee on General Government, appointed by the Speaker, and a senator from the Senate Judiciary Committee, appointed by the President, is my suggestion. The House member will provide the Committee with insight on money matters, and be in effect the Commission's liaison with the subcommittee. The senator will be useful to the Commission's in divining what is possible in the way of legislation on the substantive issues the Commission will face. The senator will also add credibility to the concerns of the Commission when dealing with the legislature, as will the representative. Mixing legislators with private citizens works well on the Governor's Commission to Advise the Department of Corrections, and the Environmental Quality Council.

Once again, the Commission and Ms. Hood seem to be doing a fine job, and I appreciate the time that was given to the Law and Justice Committee.

Respectfully,

Jim Shockley

JGS/jgs

cc: Executive Director Crichton, ACLU
Budget Director Ewer
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